

REMARKS/ARGUMENTS

Claims 36, 38 and 40-46 are pending and rejected. By this Amendment, claim 36 is amended.

35 U.S.C. §103

Claims 36, 38 and 40-46 are rejected under 35 U.S.C. §103(a) as being unpatentable over Winslow et al (U.S. Patent No. 6,083,225) in view of Hamada (U.S. Patent No. 6,436,101).

Claim 36, as amended, is directed to a kit for preparing an implant region between adjacent first and second bone surfaces. The kit includes “a rasp including a rasp head and a handle” and “a chisel including a hollow shaft that receives the handle of the rasp and spaced-apart first and second bone cutting edges adapted to slide over opposite first and second sides of the rasp head.” Support for this amendment is found throughout the specification, including, for example, at page 14, lines 15-20.

Winslow is directed to a surgical retractor 10 defining a longitudinal opening extending therethrough to receive surgical instrumentation. *See* Col. 5, lines 34-35. The retractor 10 further includes first and second arms 20, each having first and second vertebrae supporting surfaces 20a, 20b. *See* Col. 5, lines 59-60. Each arm 20 further includes tapered end portions 23 that facilitate insertion of retractor arms 20 within the intervertebral space. *See* Col. 6, lines 11-15.

Hamada is directed to rasp 501 for removing fibrocartilagenous material from the surfaces of the end plates and for shaping the end space. *See* Col. 29, lines 5-7.

Winslow fails to disclose a chisel having “spaced-apart first and second bone cutting edges” as recited in claim 36. While the Examiner asserted that vertebral discs in between vertebral bodies would be pierced and cut by the Winslow retractor arms 20, this position is inapposite to amended claim 36. Thus, while the Winslow arms 20 might pierce a vertebral disc as the arms 20 are inserted into the vertebral space to support the vertebral bodies, nowhere does Winslow teach or suggest that the retractor arms 20 are capable of cutting bone.

Rather, Winslow requires that the arms 20 separate and support the vertebrae. If the retractor arms 20 had bone cutting edges, as recited in claim 36, they would cut into the vertebrae rather than distract them, eviscerating the functionality of the Winslow device. Thus, Winslow teaches away from a chisel having “spaced-apart first and second bone cutting edges”

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according to the claimed invention. Because neither Winslow nor Hamada, alone or in combination, teaches or suggests all of the elements of claim 36, the requirements of 35 U.S.C. §103(a) are not met. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 38 and 40-46 depend from claim 36 and are allowable for at least the same reasons. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

All of the claims remaining in this application should now be seen to be in condition for allowance. The prompt issuance of a notice to that effect is respectfully solicited. If there are any remaining questions, the Examiner is requested to contact the undersigned at the number listed below.

No fee is believed to be necessary for the entry of this paper. Should any fee be required for entry of this paper, the Commissioner is authorized to charge the Faegre & Benson Deposit Account No. 06-0029 and in such event, is requested to notify us of the same.

Respectfully Submitted,

DAVID A. HANSON et al.

By:


Scott A. Marks, #44,902
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612/766-7820

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